

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

ELIZABETH DAVIS,

*

*

Petitioner,

*

*

v.

*

*

SECRETARY OF HEALTH
AND HUMAN SERVICES,

*

*

Respondent.

*

*

No. 07-193V

Special Master Christian J. Moran

Filed: May 27, 2009

flu vaccine, skin reaction
ruling on the record

UNPUBLISHED DECISION DENYING COMPENSATION*

Ms. Davis filed a petition, seeking compensation pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa–10 et seq. She filed her petition pro se and her petition, liberally construed, alleged that the flu vaccine caused her to suffer a skin reaction.¹

Ms. Davis, who is now represented by an attorney, filed a motion for a ruling on the record. Pet’r Mot., filed April 1, 2009. The record indicates that Ms. Davis is not entitled to compensation.

* Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

All decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, a party has 14 days to identify and to move to delete such information before the document’s disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access. 42 U.S.C. § 300aa–12(d)(4); Vaccine Rule 18(b).

¹ To be precise, Ms. Davis submitted a letter, which the Office of Special Masters accepted as a petition.

To receive compensation pursuant to the Vaccine Program, the petitioner must prove either: 1) that she suffered a “Table Injury”—that is, an injury falling within the Vaccine Injury Table – corresponding to one of her vaccinations, or 2) that she suffered an injury that was actually caused by a vaccine. See 42 U.S.C. §§ 300aa-13(a)(1)(A) and 300aa-11(c)(1). For the flu vaccine, no injuries are specified for compensation. See 70 Fed. Reg. 19092, 19092 (April 12, 2005); see also 42 C.F.R. § 100.3(a)(XIV).

Pursuant to the Vaccine Act, a petitioner may not be given a Vaccine Program award based on the petitioner’s claims alone. Rather, the petition must be supported by either medical records or by the opinion of a competent physician. 42 U.S.C. § 300aa-13(a)(1). The records do not contain a persuasive opinion from a medical expert or any other evidence indicating that the flu vaccine caused Ms. Davis an adverse reaction. Therefore, a medical opinion must be offered in support. Ms. Davis, however, has offered no such opinion.

Respondent filed his report and recommended that compensation be denied. Respondent stated that Ms. Davis had failed to present reliable evidence to support a finding of causation. Resp’t Rep’t, filed Jan. 29, 2009, at 7-10.

After respondent filed his report, Ms. Davis requested that a ruling upon the record as it now stands. Respondent informally communicated that he was relying upon the information contained in his report.

Ms. Davis has failed to establish the elements required for compensation. Therefore, her claim must be denied. In the absence of a timely-filed motion for review of this decision (see Appendix B to the Rules of the Court), the Clerk’s Office shall enter judgment in accord with this decision.

Christian J. Moran
Special Master